



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2021-0661]

RIN 1625-AA11

### Regulated Navigation Area; Offshore, Cape Canaveral, Florida

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is establishing a regulated navigation area (RNA) for rocket launch vehicles originating from Cape Canaveral, FL. The RNA will encompass all waters within typical rocket flight trajectories originating from launch complexes on or around Cape Canaveral, FL, and out to 12 nautical miles. The RNA is necessary to ensure the safety of vessels, mariners and navigable waters during scheduled rocket launch vehicle operations. An notice of proposed rulemaking (NPRM) and supplemental notice of proposed rulemaking (SNPRM) were conducted to allow for public comment on the rule. The SNPRM considered the comments from the NPRM, and made several minor revisions, which included revisions that expanded the list of RNA exclusion zones.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG- 2021-0661 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Junior Grade Stephanie Miranda, District 7 Waterways Division (dpw), U.S. Coast Guard; telephone (305) 415-6748, email Stephanie.L.Miranda@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
SNPRM	Supplemental notice of proposed rulemaking
§	Section
U.S.C.	United States Code
MOC	Merril Operations Center
SLD 45	U.S. Space Launch Delta 45
COTP	Captain of the Port
WGS 1984	World Geodetic System 1984

**II. Background Information and Regulatory History**

On September 17, 2021, the Coast Guard published a notice of proposed rulemaking entitled “Regulated Navigation Area; Offshore, Cape Canaveral, Florida” in the **Federal Register** (86 FR 51845) in order to replace the existing safety zone in 33 CFR 165.775 with a regulated navigation area (RNA). During the comment period on the NPRM that ended on October 18, 2021, we received three comments.

On January 7, 2022, the Coast Guard published a supplemental notice of proposed rulemaking (SNPRM) in the **Federal Register** (87 FR 916). Section III of the SNPRM provides a summary of the comments and the Coast Guard’s responses to those comments. The SNPRM revised the regulatory text from the original NPRM to expand the list of RNA exclusionary zones to include additional missions which are expected to be conducted. The SNPRM also included the Captain of the Port’s (COTP) consideration of analysis from U.S. Space Launch Delta 45 (SLD 45) when activating an RNA exclusionary zone. No other changes were made in the SNPRM. The comment period

on the SNPRM closed on March 16, 2022. No comments were submitted on the SNPRM.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Seventh District Commander and the Captain of the Port Jacksonville have determined that potential hazards associated with rocket launches from Cape Canaveral, FL, display a safety concern for anyone within the perimeter of the RNA exclusionary zones. The RNA will only be activated a reasonable time before a launch and deactivated once the area is no longer hazardous. The purpose of this rule is to ensure safety of vessels, mariners, and the navigable waters in the RNA before, during, and after the scheduled event.

### **IV. Discussion of Comments, Changes, and the Rule**

We received no comments on our SNPRM published January 7, 2022. In the final rule, the Coast Guard is making one change. The Coast Guard is revising § 165.775(b) “Definitions” to clarify that the Coast Guard representative in the Merrill Operations Center (MOC) is a designated representative of the COTP.

The final rule establishes an RNA in the following areas: All waters offshore Cape Canaveral from surface to bottom, encompassed by a line connecting the following points beginning with Point 1 at 28°48’54” N, 80°28’40” W; thence southwest to Point 2 at 28°43’20” N, 80°41’00”W; thence south along the shoreline to Point 3 at 28°25’18” N, 80°34’43” W; thence continuing south offshore to Point 4 at 28°11’00” N, 80°29’00” W; thence east to Point 5 at 28°10’00”N, 80°21’13” W; thence north along the 12 nautical mile line back to Point 1. Coordinates are in the World Geodetic System 1984 (WGS 1984). These coordinates are based on the furthest north and south trajectories of typical rocket launch vehicles originating from Cape Canaveral. In addition, there are five launch hazard areas in which the majority of rocket launches will fall and are meant to alert mariners to the general areas in which launches will occur. We list the coordinates and

locations of the five launch hazard areas in the regulatory text of this RNA.

When the RNA is deemed activated, the COTP or a designated representative will be able to restrict vessel movement including but not limited to transiting, anchoring, or mooring within this RNA to protect vessels from hazards associated with rocket launches. Active restrictions are based on mission specific launch exclusion areas provided by the SLD 45, are temporary in nature, and would only be enacted and enforced prior to and just after a launch. The COTP would be able to activate any single area, a combination of areas, or establish areas within the RNA boundary area as warranted by specific risks posed by individual launches. The determination of risk would be at the discretion of the COTP and informed by the mission specific launch exclusion areas provided by SLD 45.

The COTP will inform the public of the activation or status of the RNA and specific exclusion areas, by Broadcast Notice to Mariners on VHF-FM channel 16, Public Notice of Enforcement, on-scene presence, and by the display of a yellow ball from a 90-foot pole near the shoreline.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

The RNA will operate in a similar way to the existing safety zone, but will reduce

the size of exclusionary areas for each specific rocket launch. We expect the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. The RNA will only be activated a reasonable time before a launch and deactivated once the area is no longer hazardous.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The total time of the RNA activation and thus restriction to the public is expected to be approximately one hour per launch. Vessels would be able to transit around the activated RNA locations during these launches. We do not anticipate any significant economic impact resulting from activation of the RNA.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the activation of a RNA with smaller exclusionary zones. The activation of the RNA is expected to be an hour total per occurrence. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part

165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Revise § 165.775 to read as follows:

**§ 165.775 Regulated Navigation Area; Launch Area Offshore Cape Canaveral, FL.**

(a) *Location.* (1) The following area is a regulated navigation area (RNA): All waters offshore Cape Canaveral from surface to bottom, encompassed by a line connecting the following points beginning with Point 1 at 28°48'54" N, 80°28'40" W; thence southwest to Point 2 at 28°43'20" N, 80°41'00" W; thence south along the shoreline to Point 3 at 28°25'18" N, 80°34'43" W; thence continuing south offshore to Point 4 at 28°11'00" N, 80°29'00" W; thence east to Point 5 at 28°10'00" N, 80°21'13" W; thence north along the 12 nautical mile line back to Point 1. Coordinates are in World Geodetic System (WGS) 1984. These coordinates are based on the furthest north and south trajectories of typical rocket launch vehicles originating from Cape Canaveral.

(2) Restrictions may be enforced anywhere within the boundaries of the RNA. Restrictions will be based on the risk assessment of the Captain of the Port Jacksonville and informed by the mission specific launch exclusion areas provided by U.S. Space Launch Delta 45 (SLD 45). There are five launch hazard areas that cover rocket launches. Launch hazard areas include all navigable waters within the following coordinates, encompassed by a line starting at Point 1 connecting the following points:

- (i) *Northeast Launch Hazard Area.*

Table 1 to Paragraph (a)(2)(i)

Point 1	28°47'47" N	080°27'48" W
Point 2	28°42'18" N	080°34'55" W
Point 3	28°39'13" N	080°37'49" W
Point 4	28°32'29" N	080°33'53" W
Point 5	28°34'00" N	080°29'00" W
Point 6	28°39'43" N	080°21'57" W

(ii) *East Northeast Launch Hazard Area.*

Table 2 to Paragraph (a)(2)(ii)

Point 1	28°43'53" N	080°24'50" W
Point 2	28°36'10" N	080°35'20" W
Point 3	28°31'46" N	080°33'40" W
Point 4	28°34'42" N	080°28'40" W
Point 5	28°40'45" N	080°22'28" W

(iii) *Large East Launch Hazard Area.*

Table 3 to Paragraph (a)(2)(iii)

Point 1	28°40'32" N	080°22'21" W
Point 2	28°39'14" N	080°37'48" W
Point 3	28°27'00" N	080°31'55" W
Point 4	28°27'35" N	080°18'27" W

(iv) *Small East Launch Hazard Area.*

Table 4 to Paragraph (a)(2)(iv)

Point 1	28°39'42" N	080°21'56" W
Point 2	28°39'00" N	080°31'00" W
Point 3	28°38'00" N	080°36'58" W

Point 4	28°32'00" N	080°33'45" W
Point 5	28°31'51" N	080°20'41" W

(v) *Southeast Launch Hazard Area.*

Table 5 to Paragraph (a)(2)(v)

Point 1	28°37'00" N	080°29'00" W
Point 2	28°35'48" N	080°34'59" W
Point 3	28°25'18" N	080°34'43" W
Point 4	28°11'00" N	080°29'00" W
Point 5	28°10'00" N	080°21'13" W
Point 6	28°19'36" N	080°23'10" W
Point 7	28°22'11" N	080°20'17" W

(b) *Definitions.* The following definition applies to this section:

*Designated representative* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, Coast Guard Representatives in the Merrill Operations Center, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP) Jacksonville in the enforcement of the RNA.

(c) *Regulations.* (1) The COTP Jacksonville or a designated representative may restrict vessel movement including but not limited to transiting, anchoring, or mooring within this RNA to protect vessels from hazards associated with rocket launches. These restrictions are temporary in nature and will only be enacted and enforced prior to and just after a launch.

(2) The COTP Jacksonville may activate restrictions within any single area, a combination of areas, or establish ad hoc areas within the RNA boundary area.

Activation of prescribed or ad hoc Launch Hazard Areas will be based on the risk

assessment of the Captain of the Port Jacksonville and informed by the mission specific launch exclusion areas provided by SLD 45 to account for the specific risks posed by individual launches.

(d) *Notice of activation of RNA.* The COTP Jacksonville will inform the public of the activation or status of the RNA and specific exclusion areas, by Broadcast Notice to Mariners on VHF-FM channel 16, Public Notice of Enforcement, on-scene presence, and by the display of a yellow ball from a 90-foot pole near the shoreline at approximately 28°35'00" N, 080°34'36" W and from a 90-foot pole near the shoreline at approximately 28°55'18" N, 080°35'00" W. Coast Guard assets or other Federal, State, or local law enforcement assets will be clearly identified by lights, markings, or with agency insignia.

(e) *Contact information.* The COTP Jacksonville may be reached by telephone at (904) 564-7513. Any on-scene Coast Guard or designated representative assets may be reached on VHF-FM channel 16.

Dated: April 12, 2022

Brendan C. McPherson, Rear Admiral  
Commander, Coast Guard Seventh District.

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